IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No.136 of 2002 along with
RFA Nos.138 & 183 of 2002.

Date of Decision : August 29, 2007

RFA No. 136 of 2002

State of H.P. & another …Appellants

v.

Ram Lal & others …Respondents

RFA No. 138 of 2002

State of H.P. & another …Appellants

v.

Mansa Ram …Respondents

RFA No. 183 of 2002

State of H.P. & another …Appellants

v.

Mulmi Devi & others …Respondents

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting? [1] *Yes*

(In RFA Nos.136 & 138 of 2002)

For the appellants: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents : Mr. B. M. Chauhan, Advocate

(in RFA No. 183 of 2002)

For the appellants: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents : Mr. Satyen Vaidya, Advocate

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Sanjay Karol, J. (oral)

In all the appeals, a common award dated 12.1.2001 has been assailed, therefore, the same are being decided by a common judgment.

For the public purpose, namely, construction of road, named as 'Daulat Ram-Link-Road', the State of Himachal Pradesh issued and published a Notification dated 7.9.1996 u/s 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') intending to acquire the respondents land in question. The Collector, Land Acquisition passed an award dated 19.8.1997, fixing different rates for different classifications/category of lands.

Aggrieved by the same, the respondents herein filed a land reference petition, detail of which alongwith area of the land acquired is given as under:-

Sr.No	Names of the Reference Petitioners	Description of the land notified for acquisition.
1.	Sh. Ram Lal and others v. State of H.P. No. (96-S/4 of 1998)	1-7 bighas Bagicha Bakhal Awbal bearing khasra No.744/1, with 25 apple plants standing thereon.
2.	Sh. Kundan Singh(since deceased) and another v. State of H.P. No. (95-S/4 of 1998)	1-8 bighas Bagicha Bakhal Awbal bearing khasra Nos.852/1 and 854/1, with 30 apple plants standing thereon.
3.	Sh. Mansa Ram v. State of H.P. No. (104-S/4 of 1998)	1-7 bighas Bagicha Bakhal Doem and Bagicha Bakhal Awbal bearing khasra Nos.498/1, 536/1 and 496/1, with 32 apple plants and two pear trees standing thereon.

Relying upon the statements of the witnesses as also the judgment rendered by the Apex Court in ***State of J & K*** v. ***Mohammad Mateen Wani and others*** (AIR 1998 SC 2470) and RFA 181/1992 titled as Collector LAC, Mandi v. Karam Singh and others, the Court below held that the petitioners were entitled for compensation for the fruit bearing trees planted on the acquired land.

Accordingly, the assessment of the trees was got carried out on the basis of the 'Harbans Singh Formula', which was approved by this Court in ***Union of India and Others*** v. ***Khajana Ram and others*** (1998(1) Shim. L.C. 479). The Court below came to the conclusion that the land owners in RFA No. 136/2002 are entitled for enhanced compensation amounting to Rs.2,05,200/-, in RFA No. 138 of 2002, are entitled for enhanced compensation to Rs.2,69,251/- and in RFA No. 183 of 2002, are entitled for enhanced compensation to Rs.2,23,133/-.

Possession of the land in question was actually taken over much prior to the publication of the Notification u/s 4 of the Act and since no compensation was paid to them, consequently, the land owners filed Civil Writ Petition No. 251/1995 before this Court, which was decided with a direction that the acquisition proceedings be finalized within the stipulated time. Pursuant to the same, the acquisition proceedings have been initiated which are subject matter of the present proceedings.

Learned counsel for the appellants has argued that the Court below has seriously erred in awarding interest in terms of Section 28 of the Act from the date of possession and not from

the date of publication of the notification u/s 4 of the Act. The award accordingly needs to be modified.

Learned counsel for the respondents have not disputed this position in law and admitted the illegality which has been committed in passing of the award and admitted that the respondents would be entitled to interest from the date of publication of the notification i.e. 7.9.1996 in all the cases. However, they have invited my attention to the ratio of law laid down by the Apex Court in ***Patel Joitaram Kalidas and others*** v. ***Spl. Land Acquisition Officer and another,*** 2007(2) SCC 341, to contend that notwithstanding the fact that they have not filed the appeal, they would be entitled to benefits as stipulated u/s 23(1-A) of the Act, as the same have been wrongly rejected by the Court below. They have further submitted that in terms of the decision rendered by the Apex Court in ***Sunder*** v. ***Union of India,*** 2001(7) SCC 211, they are entitled to compensation and interest and all benefits under the Act.

That the respondents would be entitled to the benefit of the ratio of law laid down by the Court in ***Sunder*** (supra), is undisputed and needs to be paid to them. Even with regard to their entitlement u/s 23(1-A) of the Act, there cannot be any dispute. However, the question for consideration before this Court is as to whether without filing the appeal, the respondents herein are entitled to the reliefs for their entitlement u/s 23(1-A) of the Act.

Perusal of the impugned award would show that their entitlement u/s 23(1-A) of the Act was rejected on the ground

that the possession of the land has been taken prior to the issuance of the notification. In view of the undisputed position in law that the possession has to be subsequent to the date of notification, this finding of the Court below is, therefore, erroneous and needs to be set aside.

In ***Patel Joitaram Kalidas*** (supra), the Apex Court was dealing with the situation where the enhancement of claim u/s 23(1-A) of the Act was not made by the claimants before the High Court and was infact made by the claimants before the Apex Court for the first time. The Apex Court held as under:-

> "After noticing the findings of the High Court this Court held that on a reference under Section 18 of the Act the parties go to trial primarily for the determination of market value of the land. So far as award of interest is concerned, it is never an issue between the parties. Once, the conditions under Section 28 or Section 34 of the Act are satisfied the award of interest is consequential and automatic. This Court went on to observe: *(Shree Vijay Cotton & Oil Mills Ltd., case SCC P.269, para 14*)-
>
> > 14. The High Court while appreciating the point in issue did not consider the mandatory provisions of Section 34 of the Act. The said section specifically provides that when the amount of compensation is not paid on or before taking possession of the land the Collector shall pay interest at 6 per cent per annum from the date of taking over possession. The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provision of Section 34 are attracted it is obligatory for the Collector to pay the interest. If he fails to do so the

same can be claimed from the court in proceedings under Section 18 of the Act or even from the appellate court/courts thereafter.

16. There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6 per cent per annum……. The legislative mandate is clear. It is a directive to the collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest amount is to be included in the award-decree as prepared under Section 23(1) read with Section 26 of the Act. Similarly Section 28 provides "the award of the court may direct that the Collector shall pay interest. Here also the award under Section 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid under Section 34 and also under Section 28 is of different character than the compensation amount under Section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation under Section 23(1) which is an award-decree under Section 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand-maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.

17. We do not, therefore, agree with the reasoning and the findings reached by the High Court. We are of the opinion that it was not necessary for the appellant-claimant to have filed separate appeal/cross-objections

> before the High Court for the purposes of claiming interest under Section 28 or Section 34 of the Act. He could claim the interest in the State appeal. The fact, that he filed cross-objections which were dismissed as time barred, is wholly irrelevant".
>
> (Emphasis supplied)

Therefore, in my view, it would be well within the jurisdiction of this Court to consider the claim of the respondents with regard to the statutory benefits of interest which are consequential and automatic.

Accordingly, the award is modified to the extent that the respondents shall be entitled to the benefits u/s 28 only from the date of publication of the notification i.e. 7.9.1996 instead of 1.12.1989. The respondents shall also be entitled to the statutory interest as envisaged u/s 23(1-A) of the Act from the date of publication of the notification dated 7.9.1996. Needless to add, the compensation, due and payable to the respondents, in accordance with law, has to be determined on the basis of the ratio of law laid down by the Apex Court in ***Sunder*** (supra). All the appeals are disposed of accordingly.

(Sanjay Karol),
Judge.

August 29, 2007
(*rana*)